

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## LAYTON CULBERTSON,

Petitioner,

VS.

D. PARAMO,

## Respondent.

CASE NO. 14CV972 BEN (BLM)

## ORDER:

## **(1) ADOPTING REPORT AND RECOMMENDATION**

## **(2) DENYING PETITION FOR WRIT OF HABEAS CORPUS**

### **(3) DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Layton Culbertson, a state prisoner proceeding *pro se*, filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1). Respondent filed an Answer to the Petition on June 4, 2014. (Docket Nos. 10-11). On September 16, 2014, Magistrate Judge Barbara Lynn Major issued a thoughtful and thorough Report and Recommendation recommending that the Petition be denied. (Docket No. 12). Any objections to the Report and Recommendation were due October 17, 2014. (*Id.*) No objections have been filed. For the reasons that follow, the Report and Recommendation is **ADOPTED**.

A district judge “may accept, reject, or modify the recommended disposition” of a magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and

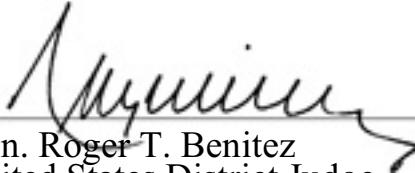
1 recommendation] that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).  
2 However, “[t]he statute makes it clear that the district judge must review the magistrate  
3 judge’s findings and recommendations *de novo if objection is made*, but not  
4 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
5 banc); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither  
6 the Constitution nor the statute requires a district judge to review, *de novo*, findings  
7 and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328  
8 F.3d at 1121.

9 After a *de novo* review, and in the absence of any objections, the Court fully  
10 **ADOPTS** Judge Major’s Report and Recommendation. The habeas petition is  
11 **DENIED**.

12 The Court **DENIES** a certificate of appealability because the issues are not  
13 debatable among jurists of reason and there are no questions adequate to deserve  
14 encouragement. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Clerk of  
15 Court shall enter judgment denying the Petition.

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17 **IT IS SO ORDERED.**  
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19 DATED: November 19, 2014

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21 Hon. Roger T. Benitez  
United States District Judge

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